



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

# DRAFT

Date:	04/11/13	Bill No:	<a href="#">Senate Bill 221</a>
Tax Program:	Sales and Use	Author:	Pavley
Sponsor:	Author	Code Sections:	RTC 6011.3 & 6012.4
Related Bills:	SB 732 (Berryhill) AB 220 (Ting) AB 1077 (Muratsuchi)	Effective Date:	01/01/14

***This analysis will only address the provisions that impact the State Board of Equalization (BOE).***

## BILL SUMMARY

This bill excludes from the state portion (6.5%) of the sales and use tax a specified Internal Revenue Code (IRC) tax credit, and any state incentive program amounts allowed on the purchase of a new alternative fuel vehicle.

## ANALYSIS

### CURRENT LAW

Existing law<sup>1</sup> imposes the sales tax on retailers for the privilege of selling tangible personal property at retail in this state. The use tax is imposed upon the storage, use or other consumption in this state of tangible personal property purchased from a retailer. The sales tax is measured by gross receipts from retail sales.<sup>2</sup> The use tax is measured by the sales price of the property. Under Revenue and Taxation Code (RTC) Sections 6011 and 6012, “sales price” and “gross receipts,” respectively, are defined to include the total amount of the sale or lease or rental price, whether received in money or otherwise. The total amount of the sale, lease or rental price includes all of the following:

- Any amount for which credit is allowed by the seller to the purchaser.
- Any services that are a part of the sale.
- All receipts, cash, credits and property of any kind.

Currently, the Sales and Use Tax Law does not provide any exclusion or exemption for sales and purchases of zero-emission or low-emission vehicles, or for any related tax credit or rebate amount on these vehicles.

**Federal incentives.** Existing IRC Section 30D provides a federal income tax incentive of up to \$7,500 for purchases of electric and plug-in hybrid electric vehicles, which include passenger vehicles and light trucks. The credit amount varies based on the capacity of the battery used to fuel the vehicle. Small neighborhood electric vehicles do not qualify.

**State incentives.** The *California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007*<sup>3</sup> created the California Air Resources Board’s (ARB) Air Quality Improvement Program (AQIP), to fund clean vehicle and

<sup>1</sup>Division 2, Part 1, Chapter 2 (commencing with Section 6051) of the Revenue and Taxation Code (RTC).

<sup>2</sup>Division 2, Part 1, Chapter 3 (commencing with Section 6201) of the RTC.

<sup>3</sup> AB 118, Stats. 2007, Ch. 750

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equipment projects. Two programs administered under the AQIP are the Clean Vehicle Rebate Project (CVRP) and the California Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP).

Under the **CVRP**, rebates of up to \$2,500 are issued to partially offset the higher cost of zero-emission vehicles (ZEV) and plug-in hybrid electric vehicles. The rebates are available for light-duty cars and trucks, low-speed neighborhood electric cars, and zero-emission motorcycles. The CVRP is administered statewide by the [California Center for Sustainable Energy](#).

The **HVIP** offers vouchers from \$8,000 to \$45,000, on a first-come, first served basis, to offset approximately half of the additional cost of eligible new hybrid and electric trucks and buses. The ARB [identifies](#) eligible truck and bus models, with pre-set amounts offered for each eligible vehicle.

A third program, the **Carl Moyer Program - On-Road Heavy-Duty Voucher Incentive Program** (VIP) is designed to provide funding for 10 or fewer vehicle fleets to quickly replace or retrofit older heavy-duty diesel vehicles. Vouchers range from \$10,000 to \$45,000, depending on such factors as the miles traveled per year, the weight class of the old truck, and emission standard of the new replacement truck. Other VIP eligibility requirements are: (1) vehicle is owned and operated in California for each of the previous two years, (2) gross vehicle weight rating is greater than 19,500 pounds, and (3) vehicle's in state usage is at least 75% of the miles traveled or fuel consumed over the last two years. Trucks must be purchased through a participating dealership.

#### PROPOSED LAW

This bill adds RTC Sections 6011.3 and 6012.4 to provide that the terms "sales price" and "gross receipts," respectively, do not include any amount allowed as a credit under IRC Section 30D, relating to new qualified plug-in electric drive vehicles. The bill also excludes amounts received, awarded, or allowed pursuant to a new alternative fuel vehicle state incentive program, which includes, but is not limited to:

- Clean Vehicle Rebate Project,
- California Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project, and
- Carl Moyer Program's On-Road Heavy-Duty Voucher Incentive Program.

The bill contains the following definitions:

- "Alternative fuel vehicle" means a motor vehicle subject to registration under the Vehicle Code that operates some or all of the time on a fuel other than gasoline or diesel.
- "Motor vehicle" means a motor vehicle as defined by Vehicle Code Section 415.

The bill requires that the estimated vehicle cost, after deducting the federal and state incentive amounts, be stated in the sale or lease contract, and then be reported to the BOE quarterly.

The exclusion would *not* apply to any tax levied pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the Transactions and Use Tax Law. The exclusion would apply to the remaining state and local sales and use tax components.<sup>4</sup>

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<sup>4</sup> 3.9375% General Fund, 1.0625% Local Revenue Fund 2011, 0.25% Fiscal Recovery Fund, 0.25% Education Protection Account, 0.50% Local Revenue Fund, and 0.50% Local Public Safety Fund.

The bill would take effect immediately as a tax levy, but would become operative from January 1, 2014, until January 1, 2022.

### BACKGROUND

In March 2012, Governor Brown issued the Executive Order B-16-2012 directing state government to help accelerate the market for ZEVs in California. The [2013 ZEV Action Plan](#) was developed by the Governor's Interagency Working Group on ZEVs, and identifies specific strategies and actions that state agencies will take to meet the executive order's goals. For the purposes of this executive order and action plan, ZEVs include hydrogen fuel cell electric vehicles and plug-in electric vehicles, which include both pure battery electric vehicles and plug-in hybrid electric vehicles. The action plan addresses light-duty passenger vehicles and heavier vehicles such as freight trucks and public buses.

### LEGISLATIVE HISTORY

During the 1989-90 Legislative Session, SB 1006 (Ch. 990, Leonard, Stats. 1990) was enacted to encourage the development and popularization of low-emission vehicles capable of using alternative fuels. Among other things, this measure added RTC Section 6356.5 to provide, until January 1, 1995, a sales and use tax exemption for the incremental costs of the sale or use of new low-emission vehicles as identified by the ARB. Although this section was repealed by its own terms on January 1, 1995, the Legislature considered two bills to extend the sunset date: SB 381 (Hayden, 1993) which failed passage in the Senate, and SB 1883 (Campbell, 1994) which died on the Senate Appropriations Committee suspense file.

Other proposed exemptions for zero-emission or low-emission vehicles include:

Year	Bill	Summary
1995	SB 780 (Leonard)	State and local tax exemption for the incremental costs of purchasing a low-emission vehicle or for the full cost of purchasing a retrofit device to make a vehicle low-emission in its operation.
1996	AB 3162 (Burton)	State and local tax exemption for the incremental costs of purchasing a new low-emission vehicle or for the full cost of purchasing a retrofit device to convert a conventional vehicle into a low-emission vehicle.
1997	SB 1096 (Brulte)	Among its provisions, provides a state and local tax exemption for the incremental costs of purchasing certain heavy motor vehicles whose engines meet specific requirements for certification by the ARB.
1998	AB 2085 (Ortiz)	Among its provisions, provides a state and local tax exemption for the sale of a new low-emission vehicle, as defined.
2001	AB 554 (Campbell)	State sales and use tax exemption for a specific percentage of the gross receipts from sales of ultra-low emission vehicles, super ultra-low emission vehicles, partially zero emission vehicles, zero emission vehicles, and advanced technology partial zero emission vehicles.
2009	AB 1309 (Saldana)	State and local tax exemption, until January 1, 2015, for the sale and purchase of electric vehicles, as defined. The exemption would be limited to 100 electric vehicles per manufacturer.

### COMMENTS

1. **Sponsor and purpose.** The author is sponsoring this bill to help make alternative fuel vehicles more cost competitive with conventionally powered cars, trucks, and SUVs. Moreover, this bill is consistent with Governor Brown's 2013 ZEV Action Plan.

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2. **Identifying eligible vehicles appears uncomplicated.** The IRS identifies and maintains on their [website](#) a list of vehicles qualifying for the IRC 30D federal tax incentives, including the incentive amount. Vehicles qualifying for a state incentive program are identified by the ARB. A current list of these eligible cars, trucks, and buses are available on the program's [website](#), including information on the incentive amount.
3. **Currently eligible vehicles.** For the federal tax incentive, eligible vehicles include plug-in hybrid electric vehicles and ZEVs driven only by an electric motor, which include battery and fuel cell electric vehicles. The ZEV or plug-in hybrid electric vehicle must have a battery with a minimum capacity of 4 kilowatt-hours. Small neighborhood electric vehicles do not qualify for this federal incentive. Plug-in hybrid electric vehicles include the Chevrolet Volt and Ford Fusion Energi. Electric-only vehicles include the Nissan Leaf and Smart Fortwo vehicle. A list of qualified vehicles is maintained on the IRS website

The three state incentive programs are CVRP, HVIP, and VIP. The CVRP qualifying vehicles are ZEVs and plug-in hybrid electric vehicles. ZEVs include: (1) battery and fuel cell electric light duty cars and trucks, (2) neighborhood electric vehicles that are categorized as low-speed vehicles with four wheels and a weight of 3,000 pounds or less, and (3) two- to three- wheeled motorcycles as defined in Vehicle Code Section 400.

For the HVIP, medium-duty and heavy-duty hybrid and electric buses or trucks, including an aerial boom truck equipped with zero-emission power take-off, are eligible.

Lastly, for the VIP, new 2010 model year or later heavy-duty truck with a California certified engine purchased through a participating dealership.

4. **Amount of the incentives.** The bill provides a partial exclusion of 6.5 percent from the sales and use tax for specified federal and state tax incentive program amounts:

**Federal tax incentive amount.** Eligible electric and plug-in hybrid electric vehicles qualify for a maximum \$7,500. The incentive amount varies based on the capacity of the battery used to fuel the vehicle. Vehicles such as the Nissan LEAF, with a 24 kWh capacity battery, are eligible for the maximum \$7,500 credit; whereas the 2012-13 Toyota Prius plug-in hybrid, only qualifies for a \$2,500 credit.

**California CVRP.** The incentive amount is capped at \$2,500. ZEVs powered by batteries or fuel cell generally qualify for the maximum incentive. Vehicles such as the Nissan LEAF and Ford Focus Electric qualify for the maximum \$2,500 incentive. Zero-emission motorcycles and low speed neighborhood electric vehicles qualify for incentives up to a \$900. For plug-in hybrid electric vehicles, the incentive amount is capped at \$1,500. These vehicle incentives can be reserved on the date of, and not prior to, vehicle purchase.

**California HVIP.** The HVIP voucher incentives range from \$8,000 to \$45,000 for eligible buses or trucks depending upon the bus or truck's gross vehicle weight rating. However, with additional incentives, HVIP voucher amounts can reach \$65,000 per bus or truck. The heavier the vehicle's gross vehicle weight rating, the greater the voucher incentive. For example, a plug-in hybrid truck with a gross vehicle weight of 10,000 pounds would receive a base voucher of \$15,000. If that same truck demonstrates at least a 40% fuel economy, it may receive an additional \$5,000 to \$10,000 incentive.

**California VIP.** For new truck replacements, voucher incentives range from \$10,000 to \$45,000 and depend on factors such as miles traveled per year, the weight class of the old truck, the emission standard of the replacement truck.

5. **Vehicle dealers' record keeping responsibilities.** Vehicle dealers would be required to keep records to verify the incentive amounts. The vehicle sale or lease contract must separately state the amount of federal and/or state incentives received by the customer.
6. **Partial exemptions complicate tax administration.** Currently, most sales and use tax exemptions and exclusions apply to the total applicable sales and use tax. However, several partial exemptions exist in which only the state tax portion (5.5%) of the sales and use tax rate are exempted, such as the farm equipment and machinery exemption. These partial exemptions are difficult for both retailers and the BOE. They complicate both return preparation and processing. Moreover, errors attributable to these partial exemptions occur frequently. This results in an additional return processing workload for the BOE.
7. **Suggested technical amendment.** Subdivision (c) requires statement of the vehicle's estimated cost in the contract of sale or lease after deducting the applicable federal and/or state incentive in a quarterly report to the BOE. However, we suggest the vehicle dealers and lessors simply retain a copy of the sales or lease contract in their records and provide the contracts to the BOE for examination upon request. We recommend the following amendment:

(c) The estimated cost of the vehicle after deducting the amounts described in subdivision (a) shall be stated in the contract for sale or lease with the purchaser, and shall be ~~reported~~provided to the board ~~quarterly~~upon request.
8. **Related legislation.** Bills introduced this year that exempt specified vehicle purchases include:
  - **AB 220 (Ting)** exempts from the state sales and use tax super ultra-low emission vehicles and advanced technology partial zero emission vehicles.
  - **AB 1077 (Muratsuchi)** excludes from the sales and use tax any IRC electric or qualified plug-in electric vehicles tax credit, and any amount received, awarded, or allowed under a state alternative fuel vehicle incentive program.
  - **SB 732 (Berryhill)** excludes from sales and use tax the trade-in value of a vehicle for a new vehicle (including a new motorcycle).

## COST ESTIMATE

An estimate is pending to determine costs to reprogram for the partial exemption, revise and process returns, notify retailers, audit claimed exemptions, and answer taxpayers' and the general public's inquiries.

**REVENUE ESTIMATE****BACKGROUND, METHODOLOGY, AND ASSUMPTIONS**

According to data from *The California Center for Sustainable Energy* (CCSE), there are five types of electric vehicles qualifying for these purchase incentives (shown in the table below). CCSE also provide data on the numbers of each type of qualifying vehicle sold during 2012.

This bill excludes the Bradley/Burns and Special District tax from the calculation, thus applicable sales and use tax (SUT) is 6.50 percent (8.38 percent total SUT, less 1.00 percent Bradley/Burns, and 0.88 percent Special District tax = 6.50 percent).

The following represents the number of qualifying type of vehicles and associated revenue loss:

Type	Count	CA rebate	US Rebate	Total Rebates	Total Exempt sales	Revenue Loss
ZEV	3738	\$ 2,500	\$ 7,500	\$10,000	\$37,380,000	\$ 2,429,700
PHEV	7351	1,500	2,500	4,000	29,404,000	1,911,260
ZEM	54	900	1,200	2,100	113,400	7,371
NEV	45	900	1,200	2,100	94,500	6,143
CZEV	0	-				
				Total	\$66,991,900	\$ 4,354,474

**REVENUE SUMMARY**

Beginning in calendar year 2014, this bill will result in an annual state and local revenue loss of \$4.4 million as follows:

Jurisdiction	Revenue 000's
State (4.1875%)	\$ 2,805
Fiscal Recovery Fund (0.25%)	167
Local (2.0625%)	1,382
Total	\$ 4,354

**Qualifying Remarks.** The Federal and State rebate amounts vary from \$900 to \$3,500 and depend on factors such as individual type, battery size, and motor power. It is not possible to calculate rebates on every qualifying vehicle sold in the state, so an average rebate value of \$2,500 is used for the five types of vehicle in the table.

There are many types of delivery van, bus, and semi-tractor commercial vehicles that qualify for rebates under this bill. But the 2012 data provided by the CCSE show no such vehicles were purchased during this year. We conclude that purchases of these type vehicles are so rare as to make little difference in our calculations.

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